# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY	)
AVERAGE WHOLESALE PRICE	) MDL No. 1456
LITIGATION	)
	) CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO	) Judge Patti B. Saris
01-CV-12257-PBS AND 01-CV-339	)
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NOTICE OF WITHDRAWAL OF PLAINTIFFS' MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS CREATED DURING THE RELEVANT TIME PERIOD DIRECTED AT DEFENDANT SCHERING-PLOUGH

Plaintiffs hereby advise the Court that they withdraw their Motion to Compel the Production of Documents Created During the Relevant Time Period From Defendants Abbott Laboratories, Astrazenca, Schering-Plough, Sicor and Together Rx Defendants, filed on May 3, 2004, against Defendant Schering-Plough. The motion was previously withdrawn as to Sicor which subsequently agreed to produce relevant documents.

Plaintiffs filed a motion to compel documents created prior to January 1, 1997 and after September 6, 2002 against the following defendants: Abbott Laboratories, Astrazeneca, Schering-Plough, Sicor, and Together Rx Defendants. Since the filing of that motion, Defendant Schering-Plough has agreed to produce responsive documents. *See* May 25, 2004 letter attached as Exhibit A. Therefore, the motion to compel is withdrawn as to Defendant Schering-Plough but remains applicable against all other defendants (Abbott, Astrazeneca and Together Rx

NOTICE OF WITHDRAWAL OF PLAINTIFFS' MOTION TO COMPEL

Defendants) except Sicor.

DATED: May 25, 2004

By Steve W. Berman, signature on file

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## **CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing NOTICE OF WITHDRAWAL OF PLAINTIFFS' MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS CREATED DURING THE RELEVANT TIME PERIOD DIRECTED AT DEFENDANT SCHERING-PLOUGH to be served on all counsel of record electronically on May 26, 2004, pursuant to Section D of Case Management Order No. 2.

Steve W. Berman

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# Exhibit A



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May 25, 2004

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# VIA FACSIMILE AND FEDERAL EXPRESS

Steve W. Berman, Esq. Hagens Berman LLP 1301 Fifth Avenue, Suite 2900 Seattle, WA 98101 Fax (206) 623-0594

Re: In re: Pharmaceutical Industry Average Wholesale Price Litigation MDL No. 1456

### Dear Steve:

I write to confirm the agreement reached in our conversation this morning regarding your motion to compel against Schering-Plough and Warrick. In exchange for your withdrawal of the motion, we will produce invoice, chargeback, and rebate data for Schering's and Warrick's drugs in the AMCC from January 1, 1991 to March 31, 2004. We will also make available for inspection certain categories of responsive documents notwithstanding our objection to the "relevant time period" in the Omnibus Requests, but otherwise consistent with our objections to the Omnibus Requests and as previously agreed. These categories are as follows:

- Contracts and related correspondence with managed care organizations.
- Contracts and related correspondence for the sale of our oncology products.
- Sales representatives' call notes for the relevant drugs.
- Pricing correspondence with Publishers as previously agreed and through March 31, 2004.

Please contact either me or Christy Talley immediately if this is inconsistent with your understanding of our agreement. Thank you.

Sincerely,

John R. Therien

cc: John T. Montgomery, Esq. Crystal D. Talley, Esq.